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CONCORD, N.H.

Dec. 7

Mr. Arnold J. H. Cheney
Chief of Law Enforcement
Fish and Game Department
State House Annex

Dear Sir:

In reference to your letter concerning trapping of beaver through the ice, it would appear that permits need not be secured from the landowner where traps are set in or on ice on a stream which, in its unfrozen condition can be navigated by boat. The authority for this conclusion lies in R. L. c. 244, s. 12. This section requires permits from the landowner in the ordinary case, but excepts "land covered by a stream navigable by a boat". While a boat could not navigate a frozen stream, still the stream may be considered navigable if, in its ordinary unfrozen state, a boat may be usefully employed upon it for transportation.

I do not feel that reference is had in this section to navigable waters as that phrase is usually used. Normally, the phrase refers to a stream of such size that it is used or capable of being used in commerce. In the section in question, the stream need only be "navigable by a boat". The Legislature thus meant to distinguish between "navigable waters" and waters which were not necessarily navigable in the ordinary sense, but were of sufficient size to accommodate a boat, such as might be used in trapping.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEW:RM